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H.152

Introduced by Representatives LaLonde of South Burlington and Botzow of  
Pownal

Referred to Committee on

Date:

Subject: Decedents' estates and fiduciary relations; Vermont Revised Uniform  
Fiduciary Access to Digital Assets Act

Statement of purpose of bill as introduced: This bill proposes to enact the  
Vermont Revised Uniform Fiduciary Access to Digital Assets Act.

An act relating to the Vermont Revised Uniform Fiduciary Access to  
Digital Assets Act

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 14 V.S.A. chapter 125 is added to read:

CHAPTER 125. VERMONT REVISED UNIFORM FIDUCIARY

ACCESS TO DIGITAL ASSETS ACT

§ 3551. SHORT TITLE

This chapter may be cited as the Vermont Revised Uniform Fiduciary  
Access to Digital Assets Act.

§ 3552. DEFINITIONS

As used in this chapter:

1           (1) “Account” means an arrangement under a terms-of-service  
2           agreement in which a custodian carries, maintains, processes, receives, or  
3           stores a digital asset of the user or provides goods or services to the user.

4           (2) “Agent” means an attorney-in-fact granted authority under a durable  
5           or nondurable power of attorney.

6           (3) “Carries” means engages in the transmission of an electronic  
7           communication.

8           (4) “Catalogue of electronic communications” means information that  
9           identifies each person with whom a user has had an electronic communication,  
10          the time and date of the communication, and the electronic address of the  
11          person.

12          (5) “Content of an electronic communication” means information  
13          concerning the substance or meaning of a communication that:

14               (A) has been sent or received by a user;

15               (B) is in electronic storage by a custodian providing an  
16               electronic-communication service to the public or is carried or maintained by a  
17               custodian providing a remote-computing service to the public; and

18               (C) is not readily accessible to the public.

19          (6) “Court” means the Probate Division of the Superior Court of  
20          Vermont.

1           (7) “Custodian” means a person who carries, maintains, processes,  
2           receives, or stores a digital asset of a user.

3           (8) “Designated recipient” means a person chosen by a user using an  
4           online tool to administer digital assets of the user.

5           (9) “Digital asset” means an electronic record in which an individual has  
6           a right or interest. The term does not include an underlying asset or liability  
7           unless the asset or liability is itself an electronic record.

8           (10) “Electronic” means relating to technology having electrical, digital,  
9           magnetic, wireless, optical, electromagnetic, or similar capabilities.

10           (11) “Electronic communication” has the same meaning as in 18 U.S.C.  
11           § 2510(12).

12           (12) “Electronic-communication service” means a custodian who  
13           provides to a user the ability to send or receive an electronic communication.

14           (13) “Fiduciary” means an original, additional, or successor personal  
15           representative, guardian, agent, or trustee.

16           (14) “Guardian” means a person appointed by a court to manage the  
17           estate of a living individual. The term includes a limited guardian.

18           (15) “Information” means data, text, images, videos, sounds, codes,  
19           computer programs, software, databases, or the like.

20           (16) “Online tool” means an electronic service provided by a custodian  
21           that allows the user, in an agreement distinct from the terms-of-service

1 agreement between the custodian and user, to provide directions for disclosure  
2 or nondisclosure of digital assets to a third person.

3 (17) "Person" means an individual, estate, business or nonprofit entity,  
4 public corporation, government or governmental subdivision, agency, or  
5 instrumentality, or other legal entity.

6 (18) "Person under guardianship" means an individual for whom a  
7 guardian has been appointed. The term includes an individual for whom an  
8 application for the appointment of a guardian is pending.

9 (19) "Personal representative" means an executor, administrator, or  
10 special administrator, or a person who performs substantially the same function  
11 as an executor, administrator, or special administrator under law of this State  
12 other than this chapter.

13 (20) "Power of attorney" means a record that grants an agent authority  
14 to act in the place of a principal.

15 (21) "Principal" means an individual who grants authority to an agent in  
16 a power of attorney.

17 (22) "Record" means information that is inscribed on a tangible medium  
18 or that is stored in an electronic or other medium and is retrievable in  
19 perceivable form.

20 (23) "Remote-computing service" means a custodian who provides a  
21 user with computer-processing services or the storage of digital assets by

1 means of an electronic communications system as defined in 18 U.S.C.

2 § 2510(14).

3 (24) “Terms-of-service agreement” means an agreement that controls  
4 the relationship between a user and a custodian.

5 (25) “Trustee” means a fiduciary with legal title to property under an  
6 agreement or declaration that creates a beneficial interest in another. The term  
7 includes a successor trustee.

8 (26) “User” means a person who has an account with a custodian.

9 (27) “Will” includes a codicil, testamentary instrument that only  
10 appoints an executor, and an instrument that revokes or revises a testamentary  
11 instrument.

12 § 3553. APPLICABILITY

13 (a) This chapter applies to:

14 (1) a fiduciary acting under a will or power of attorney executed before,  
15 on, or after the effective date of this chapter;

16 (2) a personal representative acting for a decedent who died before, on,  
17 or after the effective date of this chapter;

18 (3) a guardianship proceeding commenced before, on, or after the  
19 effective date of this chapter; and

20 (4) a trustee acting under a trust created before, on, or after the effective  
21 date of this chapter.

1       (b) This chapter applies to a custodian if the user resides in this State or  
2       resided in this State at the time of the user's death.

3       (c) This chapter does not apply to a digital asset of an employer used by an  
4       employee in the ordinary course of the employer's business.

5       § 3554. USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS

6       (a) A user may use an online tool to direct the custodian to disclose to a  
7       designated recipient or not to disclose some or all of the user's digital assets,  
8       including the content of electronic communications. If the online tool allows  
9       the user to modify or delete a direction at all times, a direction regarding  
10       disclosure using an online tool overrides a contrary direction by the user in a  
11       will, trust, power of attorney, or other record.

12       (b) If a user has not used an online tool to give direction under subsection  
13       (a) of this section or if the custodian has not provided an online tool, the user  
14       may allow or prohibit in a will, trust, power of attorney, or other record,  
15       disclosure to a fiduciary of some or all of the user's digital assets, including the  
16       content of electronic communications sent or received by the user.

17       (c) A user's direction under subsection (a) or (b) of this section overrides a  
18       contrary provision in a terms-of-service agreement that does not require the  
19       user to act affirmatively and distinctly from the user's assent to the terms of  
20       service.

1     § 3555. TERMS-OF-SERVICE AGREEMENT

2           (a) This chapter does not change or impair a right of a custodian or a user  
3     under a terms-of-service agreement to access and use digital assets of the user.

4           (b) This chapter does not give a fiduciary or designated recipient any new  
5     or expanded rights other than those held by the user for whom, or for whose  
6     estate, the fiduciary or designated recipient acts or represents.

7           (c) A fiduciary's or designated recipient's access to digital assets may be  
8     modified or eliminated by a user, by federal law, or by a terms-of-service  
9     agreement if the user has not provided direction under section 3554 of this  
10    title.

11    § 3556. PROCEDURE FOR DISCLOSING DIGITAL ASSETS

12           (a) When disclosing digital assets of a user under this chapter, the  
13    custodian may in its sole discretion:

14           (1) grant a fiduciary or designated recipient full access to the user's  
15    account;

16           (2) grant a fiduciary or designated recipient partial access to the user's  
17    account sufficient to perform the tasks with which the fiduciary or designated  
18    recipient is charged; or

19           (3) provide a fiduciary or designated recipient a copy in a record of any  
20    digital asset that, on the date the custodian received the request for disclosure,

1 the user could have accessed if the user were alive and had full capacity and  
2 access to the account.

3 (b) A custodian may assess a reasonable administrative charge for the cost  
4 of disclosing digital assets under this chapter.

5 (c) A custodian need not disclose under this chapter a digital asset deleted  
6 by a user.

7 (d) If a user directs or a fiduciary requests a custodian to disclose under this  
8 chapter some, but not all, of the user's digital assets, the custodian need not  
9 disclose the assets if segregation of the assets would impose an undue burden  
10 on the custodian. If the custodian believes the direction or request imposes an  
11 undue burden, the custodian or fiduciary may seek an order from the court to  
12 disclose:

13 (1) a subset limited by date of the user's digital assets;

14 (2) all of the user's digital assets to the fiduciary or designated recipient;

15 (3) none of the user's digital assets; or

16 (4) all of the user's digital assets to the court for review in camera.

17 § 3557. DISCLOSURE OF CONTENT OF ELECTRONIC

18 COMMUNICATIONS OF DECEASED USER

19 If a deceased user consented, or if a court directs disclosure of the contents  
20 of electronic communications of the user, the custodian shall disclose to the  
21 personal representative of the estate of the user the content of an electronic

1 communication sent or received by the user if the representative gives the  
2 custodian:

3 (1) a written request for disclosure in physical or electronic form;

4 (2) a certified copy of the death certificate of the user;

5 (3) a certified copy of the certificate of appointment of a fiduciary;

6 (4) unless the user provided direction using an online tool, a copy of the  
7 user's will, trust, power of attorney, or other record evidencing the user's  
8 consent to disclosure of the content of electronic communications; and

9 (5) if requested by the custodian:

10 (A) a number, username, address, or other unique subscriber or  
11 account identifier assigned by the custodian to identify the user's account;

12 (B) evidence linking the account to the user; or

13 (C) a finding by the court that:

14 (i) the user had a specific account with the custodian, identifiable  
15 by the information specified in subdivision (A) of this subdivision (5);

16 (ii) disclosure of the content of electronic communications of the  
17 user would not violate 18 U.S.C. § 2701 et seq., 47 U.S.C. § 222, or other  
18 applicable law;

19 (iii) unless the user provided direction using an online tool, the  
20 user consented to disclosure of the content of electronic communications; or

1                    (iv) disclosure of the content of electronic communications of the  
2                    user is reasonably necessary for administration of the estate.

3                    § 3558. DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED  
4                    USER

5                    Unless the user prohibited disclosure of digital assets or the court directs  
6                    otherwise, a custodian shall disclose to the personal representative of the estate  
7                    of a deceased user a catalogue of electronic communications sent or received  
8                    by the user, and digital assets of the user other than the content of electronic  
9                    communications, if the representative gives the custodian:

10                    (1) a written request for disclosure in physical or electronic form;

11                    (2) a certified copy of the death certificate of the user;

12                    (3) a certified copy of the certificate of appointment of fiduciary; and

13                    (4) if requested by the custodian:

14                    (A) a number, username, address, or other unique subscriber or  
15                    account identifier assigned by the custodian to identify the user's account;

16                    (B) evidence linking the account to the user;

17                    (C) an affidavit stating that disclosure of the user's digital assets is  
18                    reasonably necessary for administration of the estate; or

19                    (D) a finding by the court that:

20                    (i) the user had a specific account with the custodian, identifiable  
21                    by the information specified in subdivision (A) of this subdivision (4); or

1                   (ii) disclosure of the user's digital assets is reasonably necessary  
2                   for administration of the estate.

3                   § 3559. DISCLOSURE OF CONTENT OF ELECTRONIC

4                   COMMUNICATIONS OF PRINCIPAL

5                   To the extent a power of attorney expressly grants an agent authority over  
6                   the content of electronic communications sent or received by the principal, and  
7                   unless directed otherwise by the principal or the court, a custodian shall  
8                   disclose the content of the electronic communication to the agent if the agent  
9                   gives the custodian:

10                   (1) a written request for disclosure in physical or electronic form;

11                   (2) an original or copy of the power of attorney expressly granting the  
12                   agent authority over the content of electronic communications of the principal;

13                   (3) a certification by the agent, under penalty of perjury, that the power  
14                   of attorney is in effect; and

15                   (4) if requested by the custodian:

16                   (A) a number, username, address, or other unique subscriber or  
17                   account identifier assigned by the custodian to identify the principal's  
18                   account; or

19                   (B) evidence linking the account to the principal.

1     § 3560. DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL

2           Unless otherwise ordered by the court, directed by the principal, or provided  
3     by a power of attorney, a custodian shall disclose to an agent with specific  
4     authority over digital assets or general authority to act on behalf of a principal  
5     a catalogue of electronic communications sent or received by the principal, and  
6     digital assets of the principal other than the content of electronic  
7     communications, if the agent gives the custodian:

8           (1) a written request for disclosure in physical or electronic form;

9           (2) an original or a copy of the power of attorney that gives the agent  
10     specific authority over digital assets or general authority to act on behalf of the  
11     principal;

12           (3) a certification by the agent, under penalty of perjury, that the power  
13     of attorney is in effect; and

14           (4) if requested by the custodian:

15           (A) a number, username, address, or other unique subscriber or  
16     account identifier assigned by the custodian to identify the principal's  
17     account; or

18           (B) evidence linking the account to the principal.

1     § 3561. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN  
2             TRUSTEE IS ORIGINAL USER

3             Unless otherwise ordered by the court or provided in a trust, a custodian  
4     shall disclose to a trustee that is an original user of an account any digital asset  
5     of the account held in trust, including a catalogue of electronic  
6     communications of the trustee and the content of electronic communications.

7     § 3562. DISCLOSURE OF CONTENTS OF ELECTRONIC  
8             COMMUNICATIONS HELD IN TRUST WHEN TRUSTEE NOT  
9             ORIGINAL USER

10            Unless otherwise ordered by the court, directed by the user, or provided in a  
11     trust, a custodian shall disclose to a trustee that is not an original user of an  
12     account the content of an electronic communication sent or received by an  
13     original or successor user and carried, maintained, processed, received, or  
14     stored by the custodian in the account of the trust, if the trustee gives the  
15     custodian:

16            (1) a written request for disclosure in physical or electronic form;

17            (2) a certified copy of the trust instrument or a certification of the trust  
18     under 14A V.S.A. § 1013 that includes consent to disclosure of the content of  
19     electronic communications to the trustee;

20            (3) a certification by the trustee, under penalty of perjury, that the trust  
21     exists and the trustee is a currently acting trustee of the trust; and

1           (4) if requested by the custodian:

2           (A) a number, username, address, or other unique subscriber or  
3 account identifier assigned by the custodian to identify the trust's account; or

4           (B) evidence linking the account to the trust.

5       § 3563. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST  
6           WHEN TRUSTEE NOT ORIGINAL USER

7       Unless otherwise ordered by the court, directed by the user, or provided in a  
8 trust, a custodian shall disclose, to a trustee that is not an original user of an  
9 account, a catalogue of electronic communications sent or received by an  
10 original or successor user and stored, carried, or maintained by the custodian in  
11 an account of the trust, and any digital assets other than the content of  
12 electronic communications in which the trust has a right or interest, if the  
13 trustee gives the custodian:

14           (1) a written request for disclosure in physical or electronic form;

15           (2) a certified copy of the trust instrument or a certification of the trust  
16 under 14A V.S.A. § 1013;

17           (3) a certification by the trustee, under penalty of perjury, that the trust  
18 exists and the trustee is a currently acting trustee of the trust; and

19           (4) if requested by the custodian:

20           (A) a number, username, address, or other unique subscriber or  
21 account identifier assigned by the custodian to identify the trust's account; or

1           (B) evidence linking the account to the trust.

2           § 3564. DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN OF  
3           PERSON UNDER GUARDIANSHIP

4           (a) After an opportunity for a hearing under 14 V.S.A. § 3068, the court  
5           may grant a guardian access to the digital assets of a person under  
6           guardianship.

7           (b) Unless otherwise ordered by the court or directed by the user, a  
8           custodian shall disclose to a guardian the catalogue of electronic  
9           communications sent or received by a person under guardianship, and any  
10          digital assets other than the content of electronic communications in which the  
11          person under guardianship has a right or interest, if the guardian gives the  
12          custodian:

13           (1) a written request for disclosure in physical or electronic form;

14           (2) a certified copy of the court order that gives the guardian authority  
15          over the digital assets of the person under guardianship; and

16           (3) if requested by the custodian:

17           (A) a number, username, address, or other unique subscriber or  
18          account identifier assigned by the custodian to identify the account of the  
19          person under guardianship; or

20           (B) evidence linking the account to the person under guardianship.

1       (c) A guardian with general authority to manage the assets of a person  
2       under guardianship may request a custodian of the digital assets of the person  
3       under guardianship to suspend or terminate an account of the person under  
4       guardianship for good cause. A request made under this section shall be  
5       accompanied by a certified copy of the court order giving the guardian  
6       authority over the protected person's property.

7       § 3565. FIDUCIARY DUTY AND AUTHORITY

8       (a) The legal duties imposed on a fiduciary charged with managing tangible  
9       property apply to the management of digital assets, including:

10       (1) the duty of care;

11       (2) the duty of loyalty; and

12       (3) the duty of confidentiality.

13       (b) A fiduciary's or designated recipient's authority with respect to a digital  
14       asset of a user:

15       (1) is subject to the applicable terms of service, except as otherwise  
16       provided in section 3554 of this title;

17       (2) is subject to other applicable law, including copyright law;

18       (3) in the case of a fiduciary, is limited by the scope of the fiduciary's  
19       duties; and

20       (4) shall not be used to impersonate the user.

1       (c) A fiduciary with authority over the property of a decedent, person under  
2       guardianship, principal, or settlor has the right to access any digital asset in  
3       which the decedent, person under guardianship, principal, or settlor had a right  
4       or interest and that is not held by a custodian or subject to a terms-of-service  
5       agreement.

6       (d) A fiduciary acting within the scope of the fiduciary's duties is an  
7       authorized user of the property of the decedent, person under guardianship,  
8       principal, or settlor for the purpose of applicable computer-fraud and  
9       unauthorized-computer-access laws, including 13 V.S.A. § 4102.

10       (e) A fiduciary with authority over the tangible, personal property of a  
11       decedent, person under guardianship, principal, or settlor:

12               (1) has the right to access the property and any digital asset stored in  
13       it; and

14               (2) is an authorized user for the purpose of computer-fraud and  
15       unauthorized-computer-access laws, including 13 V.S.A. § 4102.

16       (f) A custodian may disclose information in an account to a fiduciary of the  
17       user when the information is required to terminate an account used to access  
18       digital assets licensed to the user.

19       (g) A fiduciary of a user may request a custodian to terminate the user's  
20       account. A request for termination shall be in writing, in either physical or  
21       electronic form, and accompanied by:

1           (1) if the user is deceased, a certified copy of the death certificate of  
2           the user;

3           (2) a certified copy of the certificate of appointment of fiduciary, court  
4           order, power of attorney, or trust giving the fiduciary authority over the  
5           account; and

6           (3) if requested by the custodian:

7           (A) a number, username, address, or other unique subscriber or  
8           account identifier assigned by the custodian to identify the user's account;

9           (B) evidence linking the account to the user; or

10          (C) a finding by the court that the user had a specific account with the  
11          custodian, identifiable by the information specified in subdivision (A) of this  
12          subdivision (3).

13          § 3566. CUSTODIAN COMPLIANCE AND IMMUNITY

14          (a) Not later than 60 days after receipt of the information required by  
15          sections 3557–3565 of this title, a custodian shall comply with a request under  
16          this chapter from a fiduciary or designated recipient to disclose digital assets or  
17          terminate an account. If the custodian fails to comply with the request, the  
18          fiduciary or designated recipient may apply to the court for an order directing  
19          compliance.

20          (b) An order under subsection (a) of this section directing compliance shall  
21          contain a finding that compliance is not in violation of 18 U.S.C. § 2702.

1       (c) A custodian may notify the user that a request for disclosure or to  
2       terminate an account was made under this chapter.

3       (d) A custodian may deny a request under this chapter from a fiduciary or  
4       designated recipient for disclosure of digital assets or to terminate an account if  
5       the custodian is aware of any lawful access to the account following the receipt  
6       of the fiduciary's request.

7       (e) This chapter shall not limit a custodian's ability to obtain, or require a  
8       fiduciary or designated recipient requesting disclosure or termination under  
9       this chapter to obtain, a court order that:

10       (1) specifies that an account belongs to the person under guardianship or  
11       the principal;

12       (2) specifies that there is sufficient consent from the person under  
13       guardianship or the principal to support the requested disclosure; and

14       (3) contains a finding required by law other than this chapter.

15       (f) A custodian and its officers, employees, and agents shall be immune  
16       from liability for any act or omission done in good faith compliance with this  
17       chapter.

18       § 3567. UNIFORMITY OF APPLICATION AND CONSTRUCTION

19       In applying and construing this chapter, consideration shall be given to the  
20       need to promote uniformity of the law with respect to its subject matter among  
21       states that enact it.

1     § 3568. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND  
2             NATIONAL COMMERCE ACT

3             This chapter modifies, limits, or supersedes the Electronic Signatures in  
4     Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not  
5     modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. § 7001(c), or  
6     authorize electronic delivery of any of the notices described in Section 103(b)  
7     of that Act, 15 U.S.C. § 7003(b).

8     Sec. 2. EFFECTIVE DATE

9             This act shall take effect on July 1, 2017.